IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.136 OF 2007
{LODGING NO.142/2007}
IN
NOTICE NO.1567 OF 2005
IN
EXECUTION APPLICATION NO.471 OF 2004
IN
RECOVERY CERTIFICATE APPLICATION
NO.A.R./DEP/101/648/1997

1. M/s. Satguru Construction
Co. Pvt. Ltd., 508,
Gundecha Chambers, Nagindas
Master Road, Fort,
Mumbai-400 023.

2. Shri Gopal Rameshwarlal
Khetan (Director), 78,
Khetan Bhavan, J.B. Nagar,
Andheri (E), Mumbai-59.

3. Shri Vijay Khetan (Director)
78, Khetan Bhavan, J.B.
Nagar, Andheri (East),
Mumbai-59. .... Appellants

- Versus -

Greater Bombay Co-operative
Bank Ltd., G.B.C.B. House,
89, Bhuleshwar, Mumbai -
400 002. .... Respondents

Shri Janak Dwarkadas i/b M/s. Deepak Chitnis - Chiparikar & Co. for the Appellants.

Sarvasri D.D. Madon with Ms Mamta Sadh, Ravi Goenka and Prasad Das i/b M/s. Goenka Law Associates for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: FEBRUARY 26, 2007

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Leave to remove the office objections within two weeks.

2. Admit. The learned counsel appearing on behalf of the respondents waives service. By consent, heard forthwith.

3. The present appeal arises from the order dated 29-1-2007 passed in Notice No.1567 of 2006 whereby the learned single Judge has issued the warrant of arrest against the appellants on account of non-compliance of the liability under the recovery certificate issued by the concerned authority in terms of Section 101 of the Maharashtra Co-operative Societies Act, 1960, hereinafter called as "the said Act".

4. Though the impugned order is sought to be challenged on various grounds, it is not necessary to consider all those grounds and suffice to refer to only one ground, namely, absence of jurisdiction to the learned single Judge to entertain the matter in view of the specific provisions of law comprised under Section 101(3) r/w Section 156(1)(e) of the said Act. Attention is also drawn in that regard to the decision in the matter of **Vithal Yadav Mhase v. Amdar Balasaheb Thorat Nagari Sahakari Path Sanstha Maryadit through its Administrator, Ashvi (BK), Dist. Ahmednagar,** reported

in 2001 (3) Mh.L.J. 650, delivered by one of us (R.M.S. Khandeparkar, J.).

5. It is not in dispute that the proceedings before the learned single Judge were initiated for execution of the recovery certificate dated 23-8-2000 for a sum of Rs.80,00,700/-.

6. The said proceedings were sought to be proceeded with in terms of Rule 37 of Order 21 of the Code of Civil Procedure. The impugned order further discloses that on account of refusal on the part of the appellants to repay the debt in accordance with the recovery certificate that action Section 51(b) of the C.P.C. was attracted and therefore the warrant of arrest was sought to be issued against the appellants herein. The learned counsel appearing for the appellants, drawing attention to the provisions of law comprised under Sections 101 and 156 of the said Act as referred to above, submitted that the learned single Judge has no jurisdiction to deal with the matter and the proceedings, if any, could have been initiated in terms of the sub-section (3) of Section 101 r/w Section 156(1)(e) of the said Act. The learned counsel appearing on behalf of the respondents, on the other hand, submitted that no such point regarding lack of jurisdiction was sought to be raised on behalf of the appellants and it is for the first time

that such a point is sought to be raised in this appeal.

7. The objection to the jurisdiction goes to the root of the matter and it relates to lack of jurisdiction to the civil Court to entertain proceedings for execution of a recovery certificate issued under the said Act. Considering the provisions of the said Act, it can hardly be disputed that the civil Court has no jurisdiction in that regard. Merely because the appellants had not raised such an objection before the learned single Judge, that would not preclude the appellants from raising the said point for the first time in the appeal. As the civil Court clearly lacks jurisdiction to deal with the matter, no amount of consent or failure to raise objection at earlier stage of the proceedings would confer jurisdiction upon the civil Court to deal with the execution of the recovery certificate issued under the said Act.

8. The provisions of law comprised under Section 101(3) clearly provide that a certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due thereunder and the same shall be recoverable according to the law for the time being in force, for the recovery of land revenue. Further Section 156(1)(e) specifically provides that the Registrar or any officer subordinate

to him and empowered by him in this behalf or an officer of such society as may be notified by the State Government, who is empowered by the Registrar in this behalf may, subject to such rules as may be made by the State Government, but without prejudice, to any other mode of recovery provided by or under the said Act, recover any amount due under a certificate granted by the Registrar under sub-section (1) or (2) of Section 101 or under sub-section (1) of Section 137, together with interest, any, due on such amount or sum and the costs of process according to the scales of fees laid down by the Registrar from time to time, by the attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed. Undisputedly, Rule 107 of the Maharashtra Co-operative Societies Rules, 1961, hereinafter called as "the said Rules" makes elaborate provisions of law for attachment and sale as well as all the other modes for executing a recovery certificate issued under Section 101(1) or (2) of the said Act. It is true that Section 156 specifies that the proceedings for recovery of any amount due under the recovery certificate shall be without prejudice to any other mode of recovery. However, the proviso thereto clarifies that the other mode spoken of refers to the mode provided by or under the said Act and not under any other Act or statute.

9. The provisions of law comprised under Section 156 of the said Act r/w Rule 107 of the said Rules therefore clearly provide that when any recovery certificate is issued under Section 101 of the said Act, the execution or the actual recovery of the amount in terms of such certificate has to be in the manner prescribed under the rules framed by the State Government under the said Act and in fact the Government has framed rules in that regard, and not under any other provision, nor by the authority other than the one specified under the said Act and the said Rules. The provisions of Rule 107 of the said Rules clearly incorporate the detailed procedure for execution of such recovery certificate.

10. Section 163 of the said Act clearly provides that save as expressly provided under the said Act, no Civil or Revenue Court shall have any jurisdiction in respect of any dispute required to be referred to the Co-operative Court, for decision, and all orders, decisions or awards passed in accordance with the said Act or the rules made thereunder shall be final and not liable to be challenged or set aside or modified or revised or declared void by any Court upon the merits or upon any other ground whatsoever. It is settled law that the execution proceeding is continuation of a suit. Once it is clear that no suit is maintainable for

settling dispute which could be referred to the decision of the Co-operative Court, and further the provisions of law comprised under Section 101 r/w Section 156 clearly provide that recovery certificate issued thereunder is executable in terms of the provisions of law comprised under Section 156 and the rules made in that regard by the Government, and the Government having made rule in that respect being Rule 107 of the said Rules, it would not be open for the parties to adopt a mode different than the one specifically provided under the said Act r/w the said Rules. Once the statutory provisions specifically provide the mode for execution of a recovery certificate and to recover the dues in terms of such certificate, then it is not open for the parties to choose a totally different mode and ignore the mandate of Section 163 of the said Act. The jurisdiction of the civil Court clearly stands ousted in that regard.

11. Being so, the appellants are justified in contending that the learned single Judge could not have entertained the Notice for arrest of the appellants on the alleged ground of refusal to pay the amount in terms of the recovery certificate.

12. The law on the point that the amount due under the recovery certificate can be recovered as arrears of land revenue in terms of the provisions of law, as stated

above, being abundantly clear, the impugned order cannot be sustained and is liable to be set aside. Needless to say that this order shall not prevent the respondents from taking appropriate proceedings in accordance with the provisions of law for due execution of the recovery certificate. With these observations, the appeal is allowed and the impugned order is set aside. The Notice No.1567 of 2005 in Execution Application No.471 of 2004 in Recovery Certificate Application No.A.R./DEP/101/648/1997 is hereby discharged and dismissed. There shall be no order as to costs.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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